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8 **UNITED STATES DISTRICT COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA**
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11 SIGNAL IP, INC., a California
corporation,

12 Plaintiff,

13 vs.

14 MERCEDES-BENZ USA, LLC, a
15 Delaware limited liability company;
DAIMLER NORTH AMERICA
16 CORPORATION, a Delaware
corporation,

17 Defendant.
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Case No. 2:14-cv-03109-JAK (JEMx)

**JOINT REPORT ON SEQUENCE
OF CASES FOR TRIAL**

Hon. John A. Kronstadt

First Trial Date: March 15, 2016

Plaintiff Signal IP, Inc., (“Plaintiff” or “Signal”) and defendants American Honda Motor Co., Inc. and Honda of America Mfg., Inc. (collectively “Honda”), Nissan North America, Inc. (“Nissan”), Mazda Motor of America, Inc. (“Mazda”), Subaru of America, Inc. (“Subaru”), Kia Motors America, Inc. (“KMA”), BMW of North America, LLC (“BMWNA”), and Mercedes-Benz USA, LLC (“MBUSA”), (collectively, “Defendants”) hereby submit their Joint Report on Sequence of Cases For Trial. This report is submitted pursuant to the Court’s June 12, 2015 scheduling orders in these actions, which set four trial dates in the related Signal matters but did not identify the sequence in which the trials would take place.

Plaintiff's Statement

In light of all the circumstances, Plaintiff proposes the following trial schedule:

Trial 1:	March 15, 2016	MBUSA
Trial 2:	May 10, 2016	BMWNA
Trial 3:	July 12, 2016	Honda
Trial 4:	September 13, 2016	Mazda
Unscheduled Trials:		Nissan, KMA & Subaru

Plaintiff's proposed order rests, in large part, on the considerations addressed in its oppositions to Defendants' motions to stay. Mercedes has not moved for a stay. With the new settlement of Signal's action against Volkswagen Group of America, Inc. and Bentley Motors, Inc., the pending IPR relating to U.S. Patent No. 5,954,775 will be dismissed. With that dismissal, only one of five claims asserted against BMWNA—claim 21 of U.S. Patent No. 6,012,007—will remain pending before the USPTO in IPR proceedings. Honda is in a similar position (one of four). By contrast, Mazda, Nissan, and Subaru each have three or more claims pending before the USPTO. Those claims would not justify a stay of those actions. In the absence of compelling reasons to try those actions first, however, Plaintiff proposes that the Court defer the trial of those actions until after the MBUSA, BMWNA, and

1 Honda actions have been resolved. If necessary, the Court can decide the order of
2 the unscheduled cases at a later time.

3 Signal disagrees with Defendants' proposal to modify the schedule to delay
4 filing of dispositive motions and trial. Expert reports have been completed, and
5 Signal's experts have been deposed. All but one of the expert depositions scheduled
6 for January 2016 are of *Defendants' own experts*. Defendants do not need Signal to
7 depose their own experts before they file summary judgment or *Daubert* motions.

8 As Defendants note, there is one additional deposition of Signal's validity
9 expert, Dr. Trevor Smedley, which will occur in January 2016. However, Signal
10 already made Dr. Smedley available for two days on December 16 and 17, and only
11 Mazda and Subaru participated in that deposition, and for only one day on
12 December 16. The remaining defendants elected not to participate, but they can
13 review the transcript of the Mazda and Subaru deposition. Moreover, each
14 defendant has already deposed Dr. Smedley on his background and opinions
15 regarding infringement. Signal agreed to offer Dr. Smedley for an additional
16 deposition in January as a courtesy to the defendants who either could not or would
17 not participate in the depositions that were proposed for December 16 and 17, but
18 this is not a reason to delay all dispositive motions and trial.

19 MBUSA's Statement

20 MBUSA respectfully requests that the Court modify the current scheduling
21 order to (i) postpone the trial scheduled for March 15, 2016; (ii) extend the deadline
22 for the completion of expert discovery; and (iii) allow the parties to brief dispositive
23 motions prior to determining the order in which the trials for the individual
24 Defendants should proceed. MBUSA believes that this approach will be the most
25 practical, equitable, and efficient for the reasons set forth below.

26 First, all parties appear to agree that additional time is necessary to complete
27 expert discovery. The current schedule calls for expert discovery to close on
28 January 4, 2016. However, because of the volume of experts, the intervening

1 holidays, and Signal's recent request to depose Defendants' technical experts, it has
2 been impossible to schedule all expert depositions to occur prior to January 4th. The
3 parties have worked cooperatively to schedule depositions for the experts on the first
4 available dates, but it currently appears that expert discovery cannot be completed
5 before January 28, 2016.

6 Second, given that expert discovery will not be complete until nearly the end
7 of January, the current deadline for summary judgment and *Daubert* motions
8 (January 8, 2016) should also be extended. On this point, the parties disagree.
9 Signal IP has taken the position that dispositive motions should be filed before the
10 experts are deposed. Signal IP's position, however, is impractical. Expert
11 depositions are likely to provide key evidence supporting dispositive or *Daubert*
12 motions. Conversely, expert depositions could cause the parties to re-think the
13 grounds on which to pursue such motions. As such, the parties should have the
14 opportunity to finish expert discovery prior to the deadline for dispositive and
15 *Daubert* motions.

16 Third, MBUSA respectfully submits that it would be premature to schedule
17 any party for trial on March 15th based on the current status of the case, as noted in
18 the first two items above. No party will be in a position to effectively and
19 efficiently prepare the Pretrial Order, participate in the Pretrial Conference, or try
20 these cases by mid-March. Moreover, the Court will not have an adequate
21 opportunity to consider the parties' summary judgment and *Daubert* motions.
22 MBUSA thus requests that the first trial be postponed until the date of the second
23 trial in mid-May.

24 Finally, MBUSA respectfully requests that the Court postpone determining
25 the sequence of trials until the Court has the opportunity to consider the parties'
26 dispositive motions. Proceeding in this manner will ensure that the first trial is not
27 allocated to a party that prevails on summary judgment, thereby reducing the
28 parties' litigation costs and avoiding the inconvenience to the Court of rescheduling

all of the trials after summary judgment decisions are entered.

As Signal has repeatedly noted (including above), MBUSA did not join the other Defendants in seeking a stay of this proceeding. MBUSA did not seek a stay because Signal IP's allegations of infringement against MBUSA are *exceptionally* meritless and MBUSA is confident that it will prevail on summary judgment.¹ MBUSA thus did not wish to delay the ultimate resolution of this case by seeking a stay that would, at best, partially resolve the case while forcing MBUSA to incur even greater expenses. MBUSA's desire to proceed expeditiously to summary judgment, however, is not an admission that it is "ready and willing" to try this case in March 2016, as Signal has suggested elsewhere (*see* Dkt. 111 in 14-cv-0491). To the contrary, MBUSA is hopeful that it can avoid incurring the litigation costs associated with a trial once the Court has the opportunity to consider MBUSA's straight-forward summary judgment motion, which MBUSA intends to submit immediately following the close of expert discovery.

For the reasons set forth above, MBUSA requests that the Court postpone scheduling individual trials in the Signal IP matter and instead alter the case schedule as follows:

Deadline	Original Date	New Date
Expert Discovery	January 4, 2016	January 28, 2016

¹ For example, the asserted claim of U.S. Patent No. 6,012,007 requires deactivating an airbag when the weight on a seat drops below "a level indicative of an empty seat." The accused MBUSA system, however, deactivates the airbag as soon as the weight on the seat falls below a level indicative of a seat occupied by a child, which is at 20 kg and not zero or substantially zero. U.S. Patent No. 5,954,775 requires the use of a dual rate communication protocol – i.e., a protocol that transmits data at two different data rates. The accused MBUSA system, however, does not use dual rates; it transmits data at only one data rate. U.S. Patent No. 5,714,927 requires prolonging a blind spot warning signal after the blind spot radar can no longer detect a target vehicle. The accused MBUSA system, by contrast, continues to detect vehicles long before and long after they are in the blind spot warning zone.

Deadline	Original Date	New Date
Cutoff		
SJ/Daubert Filing Deadline	January 8, 2016	January 29, 2016
SJ/Daubert Hearing Deadline	February 8, 2016	February 29, 2016
Order on the Sequence of Trials	--	March 15, 2016
Pretrial Disclosure Filing	February 22, 2016	April 15, 2016
Trial 1 Final Pretrial Conf.	February 29, 2016	April 29, 2016
Trial 1	March 15, 2016	May 10, 2016 (Original Trial 2 Date)

Mazda's Statement

Mazda joins MBUSA's statement on the first through third points. As to the final point, Mazda similarly expects to prevail at the summary judgment stage. Mazda, however, suggests that the Court set a schedule for determining trial sequence (*e.g.*, by ordering a joint report following the due date for dispositive and *Daubert* motions).

To the extent the Court decides to set a trial schedule at this stage, Mazda agrees to the sequence provided by Plaintiff.

Subaru's Statement

Subaru joins MBUSA's and Mazda's statement on MBUSA's first through third points. As to MBUSA's final point, Subaru similarly expects to prevail at the summary judgment stage. Further, only one claim of one patent is asserted against Subaru, and the maximum scope of any possible claim of damages is so limited that

1 proceeding to trial will result in a substantial waste of judicial and party resources
2 regardless of the outcome. Further, Subaru and Signal IP are engaged in settlement
3 discussions and, while no agreement has been reached, settlement before trial is
4 possible.

5 To the extent the Court decides to set a trial schedule at this stage, Subaru
6 agrees to the sequence provided by Plaintiff.

7 **Kia's Statement**

8 Kia agrees with the other defendants' requested modification to the schedule.
9 Signal has already agreed to dismiss the claim of infringement of the '927 patent
10 against Kia, leaving only claim 21 of the '007 patent. Kia has informed Signal that
11 if it does not withdraw that one remaining claim before summary judgment, Kia will
12 seek attorney fees under 35 USC 285 because Signal has no good faith basis to
13 proceed on that claim. In the interest of judicial economy, therefore, Kia joins the
14 requested modest change to the schedule.

15 **Honda's Statement**

16 Honda agrees with the other defendants' requested modification to the
17 schedule. In particular, Honda believes that the deadline for dispositive and Daubert
18 motions should be extended until all expert depositions are completed, as set forth
19 above. Such an extension is in the interest of justice and judicial economy, and
20 further will not prejudice Signal. Like the other defendants, Honda also joins the
21 request in light of the strength of its position in this matter. However, to the extent
22 that the pending motion to stay is denied and any portion of plaintiff's cases
23 survives dispositive motions, Honda believes that any party that did not join the
24 motion to stay should proceed to trial first.

25 **BMWNA's Statement**

26 BMWNA joins Mazda's statement. To the extent the Court wishes to set the
27 cases for trial at this stage, BMWNA suggests the Court order each case for trial in
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the order in which the case was filed. To the extent more than one case was filed on the same day, BMWNA suggests the Court order trials for those cases by Civil Action No. Under BMWNA's suggested approach, the cases Signal IP filed in 2014 would proceed to trial in the following order:

<u>Trial No.</u>	<u>Defendant</u>	<u>Date Case Was Filed</u>	<u>C.A. No.</u>
1	Honda	4/1/2014	2:14-cv-2454
2	Kia	4/1/2014	2:14-cv-2457
3	Mazda	4/1/2014	8:14-cv-491
4	Nissan	4/17/2014	2:14-cv-2962
5	Subaru	4/17/2014	2:14-cv-2963
6	MBUSA	4/23/2014	2:14-cv-3109
7	BMWNA	4/23/2014	2:14-cv-3111
8	VWGoA	4/23/2014	2:14-cv-3113

Proceeding in the order the cases were filed not only makes logical sense, but also is an approach followed by other Courts. *See, e.g., Prism Techs. LLC v. Sprint Spectrum L.P.*, C.A. No. 8:12-cv-123-LES-TDT, Doc. 287 (D. Neb. Feb. 9, 2015) (ordering trials by C.A. No.).

Nissan's Statement

Nissan agrees with the other defendants' requested modification to the schedule. As with the other defendants, Nissan joins the request based on the strength of its positions in this matter. To the extent the Court decides to set a trial schedule at this stage, Nissan agrees to the sequence provided by Plaintiff.

1 Dated: December 21, 2015 LINER LLP

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SIGNATURE ATTESTATION

I hereby certify that concurrence in the filing of this document has been
obtained from each of the other signatories shown above.

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